

REMARKS

Claims 1-17 and 30-39 were previously pending in this application. By this amendment, claims 1, 17 and 35-37 have been amended. No new claims have been added. As a result, claims 1-17 and 30-39 are pending for examination with claims 1, 17, 35 and 36 being independent claims. No new matter has been added. Applicant respectfully requests reconsideration in view of these amendments and the following arguments.

Rejections Under 35 U.S.C. §102

Welsh et al. – U.S. Patent No. 6,874,650

In the Office Action dated June 7, 2006, claims 1-17 and 30-39 were rejected under 35 U.S.C. §102(b) as being anticipated by Welsh et al. (U.S. Patent No. 6,874,650). Applicant has amended independent claims 1, 17 and 35 to more clearly distinguish over the references.

As amended, independent claim 1 is directed to a nestable container having four sidewalls flared upwardly and outwardly from a common bottom. Each sidewall is connected to an adjacent sidewalls by an inwardly fluted web which extends over a majority of the height of the sidewall from the common bottom. The inwardly fluted web defines thumb and finger gripping corners at the edges of said sidewalls.

Welsh is directed to a container with sidewalls 22, 24, 26, 28. The bottom corners of the container may include outwardly tapered stress-relieving corner surfaces 50 which are generally triangular in shape. (Welsh, Col. 3, lines 41-52).

As an initial matter, Welsh does not teach or suggest *inwardly fluted webs which extend over a majority of the height of the sidewall*, as recited in amended claim 1. In the Office Action, the tapered corned surfaces 50 are referenced with respect to the inwardly fluted web claimed limitation. However, these are not inwardly fluted webs, as recited in the claims. As described in the specification, the *flutes are analogous to grooves and thus have a bowed or curved configuration*. Such a configuration which also extends up a majority of the height of the sidewall is not taught or suggested in Welsh.

For at least these reasons, claim 1 is patentable over Welsh. Claims 2-16 all depend from claim 1 and are patentable for at least the same reasons.

As amended, independent claim 17 is directed to a nestable container having a frusto conic shaped sidewall with inwardly fluted webs extending over a majority of the height of the sidewall. The inwardly fluted webs define a thumb and finger gripping area for hand engagement with the container. The inwardly fluted webs also include a roughened textured surface to prevent the container from slipping out of a user's hand.

As discussed above, Welsh does teach or suggest *inwardly fluted webs extending over a majority of the height of the sidewall* and defining a thumb and finger gripping area for hand engagement, as recited in claim 17.

For at least these reasons, claim 17 is patentable over Welsh. Claims 30-34 all depend from claim 17 and are patentable for at least the same reasons.

As amended, independent claim 35 is directed to a nested container having a frusto conic shaped sidewall, a plurality of inwardly fluted webs extending parallel to one another between ends of said sidewall and terminating at one end of the open end of the container, with a peripheral lip at the open end extending outwardly. The container further includes a stepped section adjacent the peripheral lip, and a plurality of engagement ribs extending downwardly from the peripheral lip towards the stepped section.

Welsh does not teach or suggest a *plurality of inwardly fluted webs extending parallel to one another between ends of said sidewall and terminating at one end of the open end of the container*, as recited in claim 35. For at least these reasons, claim 35 is patentable over Welsh.

As amended, independent claim 36 is directed to a nestable container including a frusto conic shaped sidewall and a plurality of inwardly fluted webs defining thumb and finger gripping areas along the sidewall. The inwardly fluted webs extend substantially along the length of the sidewall from a closed end to an open end. The fluted webs have a substantially uniform radius of curvature and include a roughened textured surface to prevent the container from slipping out of a user's hand.

However, Welsh does not teach or suggest *inwardly fluted webs extending substantially along the length of the sidewall from a closed end to an open end*, as recited in claim 36. For at least these reasons, claim 36 is patentable over Welsh.

Claims 37-39 all depend from claim 36 and are patentable for at least the same reasons.

Accordingly, withdrawal of these rejections is respectfully requested.

Lahm et al. – U.S. Design Patent No. D395,392

In the Office Action, claims 1, 2, 13-16 and 39 were rejected under 35 U.S.C. §102(b) as being anticipated by Lahm et al. (U.S. Design Patent No. D395,392). As mentioned above, Applicant has amended independent claim 1 to more clearly distinguish over the references.

Independent claim 1 is described above.

Lahm is directed to a specific tray package shape disclosed in its figures.

Lahm does not teach or suggest *inwardly fluted webs which extend up from a common bottom*, as recited in amended independent claim 1. The tray in Lahm is substantially rectangular shaped and includes sections which protrude out from the tray walls. However, these protruding sections are spaced upwardly from the equivalent bottom of the tray such that the protruding sections do not share a common bottom with the other walls of the tray. Claim 1 further recites a container where *each sidewall connects to an adjacent sidewall by inwardly fluted web corners*. Lahm does not teach or suggest such a configuration. Thus, amended claim 1 is also believed to be patentable over Lahm.

Claims 2, 13-16 all depend from claim 1 and are patentable for at least the same reasons. Claim 39 depends from claim 36, which is believed to be patentable for at least the same reasons discussed above.

Accordingly, withdrawal of these rejections is respectfully requested.

Moore et al. – U.S. Design Patent No. D364,564

Also in the Office Action, claims 17, 30-37 were rejected under 35 U.S.C. §102(b) as being anticipated by Moore et al. (U.S. Design Patent No. D364,564). Applicant has amended independent claim 17, 35 and 36 to more clearly distinguish over the references.

Amended independent claim 17 is described above.

Moore is directed to a specific container configuration disclosed in its figures.

Moore does not teach or suggest *inwardly fluted webs which include a roughened textured surface to prevent the container from slipping out of a user's hand*, as recited in independent claim

17. There is no teaching in Moore for any roughened surfaces. Therefore, claim 17, as amended, is believed to also be patentable over Moore. Claims 30-34 all depend from claim 17 and are patentable for at least the same reasons.

Amended independent claim 35 is described above.

Moore does not teach or suggest a nested container with *a stepped section* adjacent the peripheral lip of the container with *a plurality of engagement ribs extending downwardly from the peripheral lip towards the stepped section*. Thus, claim 35 is believed to be patentable over Moore.

Amended independent claim 36 is also described above.

As discussed above, Moore does not disclose *inwardly fluted webs which include a roughened textured surface to prevent the container from slipping out of a user's hand*. For at least this reason, claim 36 is believed to be patentable over Moore.

Claim 37 depends on claim 36 and is believed to be patentable for at least the same reasons.

Claim 37 has also been amended to recite that the textured surface is formed by at least one of acid etching into a mold, applying an adhesive, and applying a film. There is clearly no teaching or suggestion in Moore for *inwardly fluted webs which include a roughened textured surface which is formed by acid etching, an adhesive, or a film*. For these additional reasons, dependent claim 37 is patentable in view of Moore.

Accordingly, withdrawal of these rejections is respectfully requested.

Rejections Under 35 U.S.C. §103

Claims 3-6 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lahm in view of Bostrom (U.S. Patent No. 3,344,974). Claims 7-12 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lahm in view of Fritz (U.S. Patent No. 5,423,453), and claim 38 was rejected under 35 U.S.C. §103(a) as being unpatentable over Moore.

Without acceding to the propriety of these rejections, claims 3-12 and 38 depend on independent claims 1 and 36 respectively, and are thus patentable for at least the same reasons discussed above.

Accordingly, the rejections of these claims should be withdrawn.

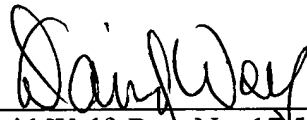
CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

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Respectfully submitted,

By 
David Wolf, Reg. No. 17,528
Shannon Pratt, Reg. No. 55,548
WOLF, GREENFIELD & SACKS, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
(617) 646-8000